IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE CIVIL JURISDICTION

PIL NO. 33 OF 2004

Daman District Sarva Samaj Committee
Macchi Mahajan Hall & Ors. ...Petitioners

V/s.

Union of India & Ors. ...Respondents

Mrs. Teja Katdare with Ms. Alpa Zhaveri for the Petitioners

Mr. R.V. Desai, Senior Counsel, for Respondent No. 1

Mr. R.V. Desai, Senior Counsel, Mr. Dipesh Mehta,
Mr. G.S. Kulkarni and Ms. Sonali Joshi for Respondent Nos.2-6.

CORAM: DALVEER BHANDARI, C.J., &
S. A. BOBDE, J.
DATE: MARCH 30, 2005.

P.C.:

1. This PIL relates to an unfortunate incident of collapse of bridge on 28th August, 2003 at Nani Daman and Moti Daman and event of police firing taken place on 29th August, 2003.

2. The petitioners have prayed that a judicial inquiry be directed to inquire into the firing taken place at Nani Daman and Moti Daman on 29th August, 2003. It is also prayed that respondent No. 3 be directed not to investigate and file any charge-sheet in FIR Nos. 160, 161, 162, 163, 164, 165 and 166 of 2003 registered at Nani Daman and Moti Daman on 29th August, 2003, and the prayer is for grant of compensation to the legal heirs of the deceased.

3. Pursuant to the direction of this court, Sanjeev Mittal, Deputy Secretary (Home), Administration of Union Territory of Daman & Diu, has filed the affidavit dated 9th August, 2004.

4. It is incorporated in the reply that this PIL is an abuse of the process of law, and the same is not maintainable. The petitioners are indirectly trying to circumvent the action taken against petitioner Nos. 4, 5 and 6. It is not disputed that petitioner Nos. 4, 5 and 6 are accused in FIR No. 162 of 2003 dated 29th August, 2003. They were arrested and then

released on bail. Petitioner Nos. 4, 5 and 6 have deliberately suppressed this fact that they are accused in FIR No. 162 of 2003; and in the garb of PIL, they have prayed that the Assistant Inspector General of Police, Administration of Daman & Diu, Nani Daman, be directed not to investigate and/or file any chargesheet in FIR Nos. 160, 161, 162, 163, 164, 165 and 166 of 2003 registered at Nani Daman and Moti Daman. The petitioners are trying to ventilate their personal grievances through this PIL. In view of the clear involvement of petitioner Nos. 4, 5 and 6 in FIR No. 162 of 2003, they want to delay the investigation through this PIL. This, indeed, is an unfortunate trend which needs to be effectively curbed.

5. The Magisterial Inquiry was ordered regarding the above-mentioned unfortunate incident. Mr. Vijay Kumar, I.A.S., District Magistrate & Collector, Daman, has conducted a comprehensive Magisterial Inquiry, and submitted a Report. The conclusions of the inquiry are reproduced hereinbelow:-

"1. **To ascertain the circumstances leading up to the rioting and the result of firing.**

The circumstances leading up to the rioting have been discussed earlier in detail. The primary cause was the extraordinary tragic incident of bridge collapse on 28/08/2003 which took lives of thirty innocent persons, majority of them being children. It was perceived by public to be a failure of administration and the resultant resentment and public anger led to rioting and arson. It started with stone pelting on the ministerial carcade in Daman.

2.To assess the number of people injured / killed and the extent of damage caused to public property.

In all two persons lost their lives. One of them was killed in police firing at Nani Daman and the

second was killed in stone pelting at Moti Daman as per the inquest report.

Twenty one persons including fourteen police officials were injured. Out of the seven private persons injured, two were injured in stone pelting on the ministerial carcade.

Government Property worth Rs. Twenty five lakhs four thousands one hundred and forty only (Rs.25,04,140/- only) was damaged.

3. **To determine whether the use of force was appropriate, timely and adequate and not in excess of the needs of the situation.**

As discussed earlier, the use of force was appropriate, timely and adequate and not in

excess of the needs of the situation. Had the force not been used, the mob could have harmed and injured many more policemen, officials on duty and damaged more government property. The possibility of harming the hon'ble MoS (Minister of State) cannot be ruled out.

4. **To identify acts of omission or commission of officials / non-officials in the incidents related to the arson / rioting and firing.**

Given the limited resources of the UT administration and the extraordinary situation which took the lives of 30 persons, preceding the incident of arson, it can be safely said that the law and order machinery including the magistrates and the police acted to the best of their judgment and in coordination with each other.

The seriousness of the situation can be gauged from the fact that the Companies of RAF (Rapid Action Force) sent by MHA (Ministry of Home Affairs), which reached Daman on 31.08.2003 had to stay till October, 2003 to normalize the situation. The District Magistrate as the head of district, the AIGP (Assistant Inspector General of Police) as the head of police organization were present on the spot and led their team with restraint. The AIGP himself was injured in stone pelting. Similarly, Executive Magistrate Incharge at Nani Daman side, Sh. Deepak Virmani, the Chief of Police Sh. R.N. Meena and Inspector Sh. E.J. Rosario were also present on the spot throughout. Had these officers not acted promptly, the loss of lives and property would have been greater, given the extraordinary circumstances, the mood of the mob and the scarce resources of the UT administration.

Regarding the role of non-officials, as discussed earlier, it is clear that the prominent community leaders, like the local Member of Parliament, the President, Daman Municipal Council and President, District Panchayat did not provoke or incite the mob to indulge in violence or arson. However, the mob was not in their control. Some individuals belonging to Youth Action Force, as detailed earlier in the report and one councillor of Daman Municipal Council Sh. Khursheed Majra, were identified on the Nani Daman side as inciting the mob. At Moti Daman side, there appeared to be no identifiable leader. Further details can come out in the police investigation being conducted separately. ”

6. The learned counsel for the respondents has handed over a letter addressed to the Administrator, Daman and Diu, from

the Ministry of Home Affairs, New Delhi, dated 26th October, 2004, in which it is incorporated that the Government has accepted the report of the Magisterial Inquiry into the firing incident that occurred on 29th August 2003 subsequent to the collapse of Damanganga Bridge and there are no further grounds for getting this aspect reinvestigated by the Commission of Inquiry set up to investigate the circumstances which led to the collapse of Damanganga Bridge on 28th August, 2003. The Union Territory has done whatever was possible. In view of comprehensive inquiry, no further directions are necessary.

7. We are quite astonished that this Public Interest Litigation has been filed by petitioner Nos. 4, 5 and 6, who are accused in a case emanating from FIR No. 162 of 2003, and the prosecution against them is pending in the Court of competent jurisdiction. Obviously, this PIL has been filed with oblique motive to scuttle the entire prosecution. This is, indeed, an abuse of the entire process of law. The Court is

left with no option. This PIL is dismissed with costs of Rs.25,000/- (Rupees Twenty Five Thousand only), which are to be paid by petitioner Nos. 4, 5 and 6 to respondent No.1 within six weeks from today.

CHIEF JUSTICE

S. A. BOBDE, J.